



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL  
ATTORNEY GENERAL

June 16, 1947

Honorable Graham Bruce      Opinion No. V-254  
County Attorney  
Orange County  
Orange, Texas

Re: Authority to hold a stock  
law election in a subdivi-  
sion of Orange County  
to determine if horses,  
mules, jacks, jennets and  
cattle may run at large.

Dear Sir:

We refer to your letter of May 23, 1947, wherein you request our opinion as to the authority of the Commissioners' Court of Orange County to order an election to enable the voters to determine whether horses, mules, jacks, jennets and cattle shall be permitted to run at large in a subdivision of Orange County. We are enclosing Opinions Nos. O-2189, O-2822 and O-6171, by former Attorneys General, which are pertinent to your inquiry.

Opinion O-2822 states that an election was held in Orange County under the provisions of Article 6930 of Vernon's Civil Statutes, to determine whether hogs, sheep and goats should be permitted to run at large in Orange County and the determination was that such animals should not be permitted to run at large. Article 6930 applies to hogs, sheep and goats.

Article 6954 of Vernon's Civil Statutes applies to horses, mules, jacks, jennets and cattle.

The case of *Ex parte Winslow*, 164 S.W. 2d 682, involves legislative history relating to Article 6954 which appeared as Article 7235 in the Revised Statutes of 1911. Montgomery County was not named in the list of counties which were authorized to hold stock law elections as therein provided. In 1925 that Article was amended by the 39th Legislature to include El Paso County. Montgomery County was not included. Article 7235 was brought forward in the Revised Statutes as Article 6954. Montgomery County was not included in Article 6954, R. S. 1925. In 1929 that Article was amended so as to include Galveston, Harris, Refugio, Jim Wells and Duval Counties, which are named in



the caption. Montgomery County was named in the body of the law, but was not named in the caption. The Court said:

"We do find, however, that in the body of the Bill there appears for the first time the County of Montgomery as one entitled to vote upon such local issue. By reason of the failure to give notice in the caption that Montgomery was to be added to such list of counties, we think the inclusion of Montgomery County therein was void and ineffective."

The case of Ward Cattle and Pasture Company vs. Carpenter, 109 Tex. 103, 200 S.W. 521, cited in your letter, is in accord with the Winslow case. In that case Matagorda County was included in Article 6954 but was omitted from the later Act without mentioning the omission in the caption. The Court held that the omission of that county from the caption, was deceptive and did not take the county out of the provisions of the law.

All laws which affected the pertinent status of Orange County were superseded by the last amendment of Article 6954, which was passed as House Bill No. 150, Chapter 265, Acts of the 48th Legislature, p. 393, being "An Act amending Article 6954 of the Revised Statutes of Texas of 1925, as the same has been heretofore amended so as to permit certain counties to have a stock law election; and declaring an emergency." That caption is sufficient to express the subject of the bill, as required by Section 35 of Article III of the State Constitution. Orange County is not named in either the caption or body of that amendment which became effective May 7, 1943.

We are of the opinion that Orange County is not authorized to hold an election to determine whether horses, mules, jacks, jennets and cattle may run at large in the county or in any sub-division of it, by reason of its exclusion from the amendment of Article 6954, by the 48th Legislature in 1943. Prior legislative history on the point is immaterial.

#### SUMMARY

Orange County having been omitted from the title and also from the body of House Bill No. 150, Acts of the 48th Legislature, p. 393, amending Article 6954, V. C. S., which authorizes named counties to hold elections to determine if horses,



mules, jacks, jennets and cattle may be permitted to run at large, is not authorized to hold such elections. V. C. S. Art. 6954; Ex parte Winslow 164 S. W. 2d, 682; Ward Cattle and Pasture Co. vs. Carpenter, 109 Tex. 103, 200 S. W. 521; Tex. Const. Art. III, Sects. 35, 36 and 43.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By   
W. T. Williams  
Assistant

APPROVED

  
PRICE DANIEL  
ATTORNEY GENERAL

WTW:WB:jrb